

LAKE COUNTY PLANNING BOARD
September 9, 2015
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Janet Camel, Steve Rosso, Roland Godan, Bob Stone, Steve Shapero

STAFF PRESENT: LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda

Bob Kormann called the meeting to order at 7:03 pm.

Lita mentioned she had consistently misspelled Gale Decker's name in the August minutes and that all 30 misspellings had been corrected so the Board didn't need to cover that one. Steve R offered other corrections to the minutes. 'Expensive' changed to 'extensive' on the third line of the second paragraph on pg. 6. 'Septic' was inserted between 'flow' and 'systems' on the third line of the last paragraph on pg. 12. On pg. 13, in the sentence that began in the 7th line of the second paragraph, 'up' was shifted from after 'sewer' to after 'hook'. "Inaudible" was changed to 'existing urban areas' in the last sentence of the third paragraph. In the last sentence of the first paragraph on pg. 15, 'to the public' changed to 'to public comment'. In the second line of the last paragraph on pg. 19, 'to' was inserted before 'protect'.

Motion by Steve Rosso, and seconded by Steve Shapero, to approve the August 12, 2015 meeting minutes as amended. Motion carried, all in favor.

DENSITY MAP & REGULATIONS (DMR) WORK SESSION (7:08 pm)

Bob introduced the working session. LaDana suggested taking public comment first. The Board received the written public comment in their packets plus another letter received today had been passed out to the Board. This was public comment received since March 2014. Janet's packet hadn't reached her. Robert gave her one. LaDana continued that part of the items for tonight were the regulations handed out during Other Business at the last meeting. Those addressed comments that she worked on with County attorney Mark Russell. She'd passed out the March memo again at that time, just to jog their memories. Per the request of the Board, she'd put together a number of points that they should talk about. She didn't know if they would get through all of them tonight. She wanted discussion on the items so she could get their feedback. She'd just completed this so they hadn't gotten it in their packets. They would go through it. The Board members took a moment to organize.

LaDana asked if they wanted to start off by watching the video that Janet had asked to show. Janet said it was 33 minutes in length. The sound for the video was initially available at a soft level. Jacob improvised for much improved volume. (See attachments to minutes in the Sept 2015 meeting file for DVD or else DVD location).

Janet thought it was important for the group members to hear from people other than her about what values the Tribes were trying to protect and why the DMR was such an important component of that.

Public comment opened:

Thomson Smith: He remembered being part of the process a few years ago. It was a great process where a lot of citizens spent a lot of time at those meetings. The way it began was they were often diverse groups. A lot of what they loved about this place was shared. They proceeded to thinking carefully about what people wanted to have here well into the future and what threatened those things. He thought the DMRs were a great achievement that worked well. He didn't know the legal questions that had been raised. He knew it hadn't been [challenged] by a lawsuit in 10 years so it seemed to work. He just learned the other day about a MT Supreme Court decision that might have relevance and give the Planning Board and Commissioners some grounds for defending the DMR if they were to come under attack. The case was called *Hafferman v City of Missoula* from 2011. His rudimentary understanding was it reversed a lower court decision and said that the county road plan could have within it neighborhood plans that basically shaped density. His understanding of the DMR was Lake County had done that for the whole county. It was basically neighborhood by neighborhood. They'd sorted out areas that were more amenable to denser development and areas that would seem more appropriate for less density.

From what Thomson understood, they hadn't heard too many voices in support of these regulations so far. He wanted to make sure they did hear some. He wasn't just speaking for himself but for a lot of folks that took part in this, spent a lot of time on it and were concerned. He was the person in the video who said he didn't want to see this place turn into the Bitterroot or Flathead Valley. The County faced a lot of challenges right now and concerns about tax revenue. He had the pleasure of getting a deeper understanding of these things from Gale in the Flathead Basin Commission meeting today. He understood those were serious issues and how much the County had to grapple with those things. His suggestion would be to not rush. He understood the County set a deadline for itself to try to get a decision made by the end of the year. This was a time of a little bit of uncertainty both for the County and the Tribes. A lot of transitions were happening and getting worked out. This was a decision that could have ramifications way down the road, not just the next 5 or 10 years. He urged taking a lot of deliberation about this and not rushing or throwing out the baby with the bathwater.

Karin Stallard of Charlo spoke. She was new to this process but she was happy to see it underway. She didn't know a lot about what had been done so far. She favored what Thompson Smith said. She urged them not to rush but to exercise due deliberation on something that's important. She was in favor of the DMR. Thompson Smith noted that he and Karen lived in a rural area of the county too, on 40 acres about a mile west of Ninepipe.

Jordan Thompson: He was a Tribal member, a Tribal attorney and lived on the east side of Flathead Lake near the Finley Point cut off. He was ignorant about the DMR. This was his first meeting ever. He thought there were a lot of people who didn't know much about it. He was totally in support of regulating growth. It sounded like that process had already taken place once with a lot of deliberation. He would support keeping that plan in place. He echoed what Tom and Karen said. If they did need to change it, then take the time to think about it hard and hopefully in collaboration with the Tribes, who might have comment.

Roland said as he watched the video, he thought everybody supported the ideas of the video. It was the implementation and mechanics that got more complicated. If asked if they want good air quality or to preserve the environment, most people would say yes. How did you implement that in a balance with economic development and people's desire to sustain and improve their lives? He shared a saying that was a joke: Do you know the difference between a developer and an environmentalist? The environmentalist already has a cabin in the woods. A lot of support for these things depended on where people were sitting, set with what they wanted. They were content and didn't want others to come in and do something else. That was a natural human reaction. It went both ways. [The Board] listened constantly to people who wanted variations from different regulations including the DMR. His understanding was that the DMR as it was, was not enforceable. It was just a policy and still an idea. People were saying to go slow but it had been slow. It had been 10 years in the making. He was probably in the boat with [Jordan]—he didn't know that much about it. He looked at it from human nature. Everybody was for density of say 40 acres until you were the one who wanted to divide your property and give 10 acres to your kids. He lived in a rural area and would hate to see the property next to him divided into quarter acre lots with houses along the fence line. The owner might like to do that if that was his retirement. It depended on what side of the fence you were on, with what you had in life and what you owned. That's what made the process so difficult, not the ideology of what people wanted in general. It was how you made it fair. How did you know that the DMR was truly accurate and applicable in the long run in its implementation phase? It was kind of like speed limits—suddenly [along the road] it changed from 45 to 65 mph. What magic thing happened at that speed limit sign so that it's suddenly okay to go 65 instead of 45? It was an arbitrary decision someone made. On the fringes of the DMR, those were arbitrary decisions. If 40-acre parcels were okay on one side of the road but not the other, what changed? The people who were on that side of the road were the ones affected by it. It was fair implementation of an ideology that they were trying to figure out.

Janet felt the DMR was partly based on science. They met with wildlife experts who looked at bald eagle nesting habitat and preservation for many species who couldn't speak for themselves. You could hear the elders in the video saying they had to speak for them because there was no one else to protect the resources for them. They consulted the experts who recommended a half mile buffer along either side of the Jocko River. That was why there was the one per 40 designation along the Jocko and Flathead Rivers, the buffer zone next to the wilderness, and Post Creek and Crow Creek and around Ninepipe Reservoir. That density was recommended by scientists. The ground nesting birds were disturbed by dogs and cats when there were more homes. That was why density restrictions were so important in those areas. The Tribes owned the majority of the land in those areas and were not developing those properties.

They had a dichotomy between individuals who felt their property rights were the most important thing to them and there were individuals who felt protecting these resources for wildlife and for people was the most important thing. What they tried to do was to reach a good balance. For example, the Tribes would have liked to see more lands set aside at 1 per 40 density and they compromised. They went back and forth with the comments they received at public meetings with the comments received from the Planning Board and the steering committee. They revised and tweaked some areas. They looked at the existing density and made it less restrictive in those areas accordingly. They compromised. They used science to identify

the vulnerable aquifer areas, steep slopes and soils that were the most productive for farming, which they mapped. They used computer generated mapping and science to poll people about what resources they wanted to see protected. It wasn't arbitrary. It was based on research, science and compromise. To her the map was an excellent product. If the regulations needed to be tweaked because they were difficult to support, she supported the Planning staff in wanting to look at revisions to make that easier. They allowed for family transfers. If a person wanted to subdivide their property for a family member, they could do it. The family transfer process was exempt from the DMR so family members weren't affected by this. This was using science to try to protect resources that couldn't speak for themselves and the values of the Tribal people who had been there for over 14,000 years and had become outnumbered on their own reservation and their own remaining homeland. They were trying to come up with this compromise solution.

If it meant revising the DMR to make them easier to enforce and uphold in court, [the Tribes] would do that and would help. The head of their legal department already told Janet that she was going to assign someone to help work on this. The Tribes were very committed to making this work for the protection of everyone and to protect the resources. This was a unique place that [people here] had an obligation try to protect before it was gone or taken up. There weren't many places like this in the country where you had a government that was this committed to putting a lot of money into the protection of natural resources. The Tribes were doing that. It would be a shame if the parcels the Tribes bought along the Jocko and Flathead Rivers for wildlife and habitat protection were ruined because some non-Tribal landowner wanted to put 80 homes on a 40-acre piece because they could. Was that respectful of your neighbor or this place? They could do that somewhere else. Here they were trying to protect these resources for future generations. Everybody could fish here or hunt waterfowl. It wasn't that they were just doing it for the Tribal people. They were doing it for the Tribal neighbors. People moved here because they appreciated these values and the clean water and they didn't want it to be the Bitterroot. It wasn't [someone's] right to pollute the neighbor's water by having too many houses in a vulnerable aquifer area.

Roland said he supported the values. He was talking about the application of it and the fairness of the division. The fringes of the delineations were arbitrary. Compromise was the definition of arbitration, which was arbitrary. There was push and pull that had nothing to do with science. It had to do with what was going on along those boundaries of the delineations of different property sizes. On family transfers, he was curious about the deed history on family transfers for the past hundred years and how many ended up staying within those families. He thought they knew the answer to that question. It was used as a method of subdivision. He'd seen maps over at the Tribes with the change in land ownership at the Flathead Reservation from the 1800's on, with the initial Indian-owned and then shifted to non-Indian, and gradually going back, piece by piece. He thought there was a sense of blame that the non-Indian people were ruining the Flathead Reservation by development. He was curious about the deed transfer history of his own 10 acres. At some point, a Native American sold it to a non-Native American. That was where that growth started. Janet said this was because of tax sales and fraud. Tribal members didn't have money to pay taxes. If they wanted to vote in Federal elections, they had to put their land in fee. Many didn't speak English. Others were told by merchants and mercantiles that they could run a tab. They weren't used to using money to pay for things so they didn't have that concept. They were used to bartering and trading.

Roland explained he was referring to more recently, such as this year, where native sold to non-native. To stop that, the unrealistic solution would be you couldn't sell your land to a non-native person. Janet said there was less than 4% of the Reservation that was individually owned Indian land. Tribal researchers researched a lot of the deeds. People lost their land to debt in the old days. More recently, they'd sold their land to the Tribes and few that did otherwise. They went to the open market after they went to the Tribes. As you could see in the video, the Tribes had been spending millions of dollars per decade to try to buy back their own land that was illegally taken. They had roughly 2 million dollars per year set aside for purchasing land. Sometimes they got offers for 4 to 12 million dollars of property a year. Then they had to pick and choose. The priority was to buy from Tribal members who owned individual land. The majority of land owned on the Reservation was owned by the Tribes in common. [Tribal members] could lease the land but couldn't sell it. If someone had a non-member spouse, sometimes their development was kept in fee status so the spouse could inherit. A non-member spouse could not inherit Trust land. There were a lot of complexities. Probates could take 10 years to resolve.

Roland gave the example of Stage 2 fire restrictions. The County and the Tribes walked two separate paths with implementing that. The question was which did he follow on his land? He thought they ran into that on the Planning Board. They made advisements for the Commissioners. Ultimately did they have the right to do that? He didn't think there was a clear-cut answer to that. Did [the Tribes] have the right to do what they were doing, if they followed the logic of the video back to the old treaties? Janet said the Tribes chose to not sue the County and try to take jurisdiction over everything. The Tribes had jurisdiction over wetlands and the ALCO ordinance over the shoreline on the reservation, over cultural resources and over things for which they had ordinances in place. Where they didn't have regulations, they were trying to work cooperatively with the Counties. The Tribes had civil jurisdiction over Tribal members on the Reservation. You could say the Tribes had jurisdiction over non-members to some degree, depending on the issue. Instead the Tribes had chosen to cooperate and work with the Counties on land regulation issues. In Missoula County, they had a memorandum of agreement that said once the Tribes got their own subdivision regulations in place, Missoula County might defer to the Tribes. The same was true with Floodplain regulations. Just like [Lake County] was funded by [inaudible] tax money, they didn't have a big budget for land planning. Trying to regulate non-Tribal people would be a very expensive proposition so instead they were trying to work cooperatively. The Wildland Fire folk and Tribal Council tried to communicate well with the County Commissioners. She knew both groups put out the 4th of July firework restrictions out at the same time. The coordination happened to a pretty good degree. They were within days of one another for lifting the restrictions. She thought there was excellent communication. It was complicated but much improved from 20 years ago.

Roland gave another example about the type of septic system allowed. He said this was one of many examples that confused people like himself. Which did he follow? In his heart, he believed he should follow the Tribal, [but] not because it was simpler and cheaper. This was on the reservation. If the original land trustees said here's how you do your septic, he thought that was how it should be done and applied to everybody, not segregated out for a group of people to be able to comply with that set of regulations but if you were non-Indian you had to do it this other way. That confused people. Those abounded in this Planning packet. He talked about

working together more closely. For example, the stage fire restrictions could be done jointly by the County and the Tribes in the same announcement, to avoid the overlap (in this case well over a week) where one entity said he could mow his lawn and the other said he couldn't. There were many more complicated issues. Until they got that timing tighter, with more unison and cooperation between the different offices and agencies, it would continue to be a confusing thing. It would continue to not allow the DMR to come to its fruition and be implemented because who did it apply to?

Gale commented about the Tribal land acquisition. The County was driven by property tax collection. That was where they got money for roads and services. As the Tribes acquired more land, they took the land off the property tax rolls. That loss had to be made up by the other tax payers within the County. Some of the tax payers were Tribal because they didn't have their land in trust. The DMR had depressed some of the land values, particularly on bigger parcels of property. That allowed the Tribes to buy more land, which took more land off the property tax rolls. The question he received was why the County should have a DMR in force which helped the Tribes buy back more land and take it off the tax rolls and therefore increased the property taxes for the other land owners in Lake County. He couldn't come up with a good answer for that.

Janet said the Tribes brought in quite a bit of money for roads. She gave examples of bridge improvements and paving of several County roads when the County lacked the tax dollars to do it. They leased the Big Arm and Arlee fire halls and the Dayton school properties [to these entities] each for \$1 per year. Gale said the County did that too, where they leased out land for \$1 per year. Janet said there were multiple examples where the Tribes donated back in lieu of the taxes. This was Tribal land that was illegally taken. It should have been Tribal land all along. The fact that people came in and subdivided it into tiny parcels that were more difficult to purchase wasn't really fair when it was Tribal land to begin with. The Tribes weren't trying to take anything away from anybody. They were buying it back at fair market value from willing sellers. Gale agreed with that. The reality was land was being taken off the tax rolls and therefore it put a real strain on the goods and services that the County could provide.

Thom [Smith] said the federal government provided relief to counties in analogous situations, with significant Forest Service, BLM lands or other [inaudible] lands within a county. There was payment from the federal government in lieu of taxes. Gale said schools got impact aid money. Thom wondered since the federal government had a policy of supporting Tribal sovereignties and Tribal land reacquisition lost through the Allotment Act. He noted that Janet was correct in that it was ruled by federal courts to be a breach of the Hellgate Treaty. He wondered if they could explore a solution to this with Senator Tester, Senator Daines or Representative Zinke or at least have a conversation. Gale said they'd had that for about 2 ½ years. He had heard the Tribes opposed this since they thought some of their federal monies would be taken away and provided to the County. Folks from Senator Tester and Senator Daines had been in the office at least 4 times since he'd been Commissioner. They tried to follow that route. The federal government gave the schools money in lieu of taxes so why not county government? Thom suggested the County and Tribes could come together the way they did with the DMR. If the County and the Tribes went together to Senator Daines or Senator Tester with

an agreed-upon solution, there was a tremendous chance of success. Gale said they would love to do that. Thom said he wasn't aware [the County] had been having those conversations.

Thom said not only individuals but the Tribes and the County had done many things to protect lands that were actually against their self-interest. If he understood Roland's remarks, it seemed like everyone was acting out of self-interest. Roland said that he didn't mean that at all. Thom thought there was a lot of that but it wasn't all that was going on. Every time people looked at the Mission Mountains, they needed to remember that could have been lost. It was set aside [by the Tribes] as a Tribal wilderness, which was a tremendous sacrifice for a community suffering from severe economic problems. They'd done similar things elsewhere. He thought many individual owners around the County, non-Indian as well as Tribal, had bought lands and set them into conservation easements where maybe there was a little tax benefit but nothing compared to what they would have made from developing. He saw shared sentiment between Indians and non-Indians about respecting this place and wanting to see something similar in future generations, [which had] animated the development of the DMR 10 years ago. His concern was what would happen if the DMR went away without something else being in place and how difficult it would be to get something else in place. For him personally, it seemed to make sense to look at ways that what they had could be adjusted to address some of the difficulties that were being faced, especially with the bigger problems that were going on. It seemed like it would be easy to blame it all on the DMR. Even if you did away with those, it wasn't going to solve the issues they were dealing with. Gale said there were a lot of 'moving parts' in Lake County right now: the water compact, the dam purchase, DMR. If there was a solution, it would be here at the local level, between the Tribes and the counties and the cities and everybody else. They needed to get to the table together and have conversations about the current local issues and where they would go forward. They didn't want to go backwards but they did have to have some conversations about the loss of tax revenue. That was huge right now for Lake County. He thought there were solutions. He thought they had to solve them locally.

Bob said his opinion of maximum density was a person saw it as being what it was just after that person moved here, for those who moved here and didn't grow up here. The roadway taken to get here, created the desire to live here. That ribbon of highway 93 was, in his opinion, a big desire-maker or magnet. What he saw in the video was that maybe the Tribes would like to control the growth. He didn't know how that squared with putting in a huge casino by expanding KwaTaqNuk for a destination place that would create that desire. They needed some density planning but he didn't know how that squared with what he saw in the video and with the Tribal Council wanting to put \$34 million into a destination casino that would bring more people to impact this reservation.

Janet replied this concern had been brought up by many people. The culture committees had quite a few concerns. The Tribes provided assistance to elders who didn't get the assistance they needed from the federal government. They had to fund culture committees and programs. They funded language programs because of the influx of non-Indian people affected their ability to speak their language. It either wasn't taught in the schools or might be one small class that not all of the kids could go to. The Tribes were trying to pay for a way to protect what was left of the culture and the language from impacts on the Tribal culture. There were fisheries and

wildlife programs and a court system. The Tribes didn't collect taxes. Their only means of revenue generation was two relatively small casinos.

The casino at Evaro had been scaled back from what was originally planned. For KwaTaqNuk, the only expansion was to remove the outdoor swimming pool, add fire pits and upgrade some guest rooms. Best Western made these recommendations since the resort was over 20 years old and the Tribes had to come up with the money to upgrade it. The KwaTaqNuk was on a major highway corridor that was built by the State, not the Tribes. There was already an impact and development there, and one of the least sensitive areas of the reservation. They wanted to guide growth into those areas, not stop growth altogether. Growth was going to happen. What they were saying was areas that didn't have a lot of development, aquifer vulnerability issues, wildlife habitat concerns or prime farmland were areas they needed to protect while they could, before they were gone or subdivided. She gave details about the development that existed in the Evaro area and explained that the Tribes took a mile of prime highway frontage that they owned just north of that on both sides of the highway and set it aside for wildlife habitat. They put the animal bridge there and took out Tribal home sites that were platted on the north end of that. They were trying to balance this but couldn't pay for the Tribal programs because they didn't collect taxes. They had to pay for them some way so they had to generate some revenue. They wrote grants and brought in federal dollars to the area. They were trying to keep development limited to areas where there was already an impact. Bob K asked if the elders thought casinos were a good idea. Janet thought some elders agreed with gambling because of stick game, a form of gambling that was an old tradition, and horse racing, another old tradition. Some people agreed with modern gambling and some did not, depending on their cultural viewpoint.

Thom said public information in published articles described in detail that elders expressed strong opposition to the development of the casino at Evaro. Bob K asked if the Tribes would listen to that. Janet said some people on the Tribal Council were listening. Some council felt the casinos were the only way to bring in additional money. Bob K said the upshot was you'd bring more people up the ribbon of Hwy 93 and the desire to live here would be implemented. Then they would have to deal with the impact of more people, which was what this was about. He understood the video and that the Tribes wanted to keep their heritage. He was for that. He thought it was really important that the County government worked with the Tribal government. At the same time, he didn't want to hear them talking out of both sides of their mouth and create a destination gambling casino with a bus to go see Flathead Lake. The next thing [the visitors] would do was go to the realtor to get a piece of this. He thought they had to work together and this left a question between what he heard the Tribes saying and what he saw them doing. Janet said there were ten on Council and they didn't all agree. [Thom] said that issue was one of many of the moving parts right now. It was a particular period of uncertainty. How [things] would turn out wasn't clear. Bob K agreed. He thought they needed to work together.

Roland mentioned some little inconsistencies he'd picked up. The Tribes did collect a fee or revenue source on federal highway projects. With the Skyline Drive project, he thought 4 or 6 percent went to the Tribes. Janet said the Tribes had to provide staff to do work, which was donated in kind work. There was a lot of give and take. That was the only fee the Tribes were able to collect. The rest was Tribal grants. There were many issues and she had to defer to the Tribal Council, whose members were not all in agreement. As Thom pointed out, [the Tribes]

sat down with the County Commissioners and tried to hash things out to come up with solutions. The DMR was an example of that, with a lot of give and take.

Gale said [the Commissioners] asked for meetings. They hadn't heard from the Council in 2 months. Janet thought part of that was trying to get through paying for the dam. It had been 30 years in the making and they had a lot to get finished with that. Gale said they could still talk. Janet said that now four Tribal Council [members] were up for election and that was very controversial. She thought the door was still open. They could ask to get on the Tribal Council agenda. Gale said they had. They'd left phone messages for Vernon, they'd talked to Rob and they just hadn't gotten anywhere for about 2 months. Janet hoped that would change. Gale said they hadn't given up hope.

Roland recalled a comment about the DMR at a previous public meeting. Someone said if there was a lawsuit, they would win because it was unenforceable in its current form. Was that correct? Gale didn't know. LaDana thought it was lucky that they hadn't been challenged. Roland said if they didn't have teeth with the DMR, to some degree it was a waste of time. Everyone had ideologies but you couldn't tie that to execution and implementation. It was an idea. If it couldn't be tied, it needed to be discontinued and something else needed to be tried.

Robert reminded to focus on the topic at hand as best they could. He noted a thought that, as staff did research, work and discussions and also as he watched the video, it was currently 2015. The dates that flashed in front of them were 1993, 1996, 2003 and 2005. They were getting further and further along in time. Times changed and priorities changed as well. A lot of the solutions were ones they needed to find through examining what their priorities were. He thought that was another part of the discussion that was going on. This wasn't just what Lake County's priorities were but the priorities for the entire community, keeping in mind that there was more than Tribal areas that came into play with this map. If they were going to work together as a community, it needed to be cooperatively with the Tribes and with other stakeholders but maybe they needed to examine what the priorities were before they got into what the solutions were.

LaDana referred to an email she got from Steve S. The growth policy was from 2003. It was outdated at this point. The state required updates, which had not occurred. It was due for an update. The DMR was based on the 2003 Growth Policy. Part of what they needed to look at was dealing with an update for the growth policy and figuring out what kind of regulation they needed, and if they needed one, to go along with that to support it. Staff had a lot of discussions. They'd heard 'let's not scrap it'. They weren't for scrapping it. They were in favor of making it work if they could. In its current form, it didn't work. It was just a matter of time until they got sued with that document. She didn't think the regulations or the map with the DMR gave people the security they hoped for, if they really knew what was in the regulations. The regulations only applied to when you created parcels. If a property owner never created a parcel, how did that stop the owner from making their lot dense? She wanted the Board to keep that in mind. She thought these discussions were a good way to start on this.

LaDana noted that Roland made the point of 'is it fair?' Regulations should be fair but the reality of regulations was that they were not. There was give and take. They had to keep in

mind to make the regulations as balanced as they could. The other item was: were they written clearly? If the public couldn't understand them, if the Board couldn't understand them and if the staff couldn't understand them, who could? Right now, they had a document that was really difficult to understand. As she talked to some of the Board members in passing, she asked them if they knew what the regulations meant. When she got the response that the regulations were confusing or that someone hadn't read the whole thing, that was shocking to her because the Board members were the ones here making decisions on a document that even the Board members couldn't understand. She and her staff couldn't understand them either. That was how confusing the regulations were. She understood why the public couldn't understand them.

Another thing to keep in mind was that when the DMR were implemented, Lake County became entirely zoned. You either fell under one of the other zoning districts or the DMR. [The County] had part 1 zoning, which was citizen-initiated, with Melita Island zoning, Kings Point zoning and South of Ronan zoning. [The County also] had part 2 zoning, which included East Shore, Upper West Shore, Swan Sites, Finley Point and others. They had some districts that began as part 1 zoning and over time transferred over to part 2 zoning, like Upper West Shore and Swan Sites. Not all of those zoning regulations addressed density. If you were really trying to address density on everything, this wasn't done with the regulations that were in place but Lake County was entirely zoned. DMR addressed only density. A lot of the other zoning districts pulled in land uses. Melita Island zoning only addressed uses. It didn't have setback or heights, for instance. The regulations were as varied as the county. A lot of those were citizen initiated, where they came up with what they wanted in their regulations. Janet asked if the density showed underneath the zoning areas [on the computer] so if they didn't have density, the color [for the density] showed up underneath the hash marks. LaDana said the color showed up but as they got into talking about the document she would explain why that didn't work. They didn't need to get into that tonight.

Another thing the Board should be aware of was that Lake County already had a number of regulations already in place. Maybe they could look at beefing up some of those regulations if they needed something else if the DMR went away and they needed something else in its place to fall back on. They might not be perfect but there were update processes they could do. [The County] had sanitation regulations, DEQ requirements and subdivision regulations which addressed a lot of things they were trying to address with the DMR like buffers and wildlife. The subdivision regulations had standards in the wildlife urban interface areas that limited density in those areas. They addressed steep slopes and floodplain development. Subdivisions, which were really when the DMR kicked in, were where you addressed impacts to agriculture, agricultural water users, local services, natural environment, wildlife, wildlife habitat and public health and safety. That was required under state law for subdivision review. The County had floodplain regulations that were updated in 2013 with accompanying maps. They had lakeshore protection regulations, which covered Swan Lake, Flathead Lake and Lake Mary Ronan. There were other federal and state laws that came into play. Other methods of monitoring existed, like trying to get people to do conservation easements by educating them on the benefits, such as tax incentives. She knew it wasn't perfect but she wanted them to be aware of other things that were out there in play to keep in mind.

Roland thought the question was how things dovetailed. It seemed like [those] trumped the DMR ultimately. There was no reference to a DMR in any of those regulations. Robert and LaDana said it supplemented it. Roland asked if the DMR supplemented the regulations. Robert said they worked together. The way the regulations were written, it did nothing but say the average density of a parcel. It didn't dictate distance from stream or what you could do in a floodplain. Those other regulations keyed into those standards of what you could do in those more sensitive areas. Roland asked if the goal was to merge the map into the regulations as a supporting document of some sort. LaDana said no, as far as merging the DMR into the other regulations. Janet saw this difficulty in that the DMR helped them when they were developing Tribal property. [The Tribes] would identify areas where they did and did not want to do home site development. It bridged what was happening with the County and with the Tribes. It was a useful tool for crossing the land ownership divide. That was why she liked it: it clearly showed people areas where they really wanted to see resource protection. The Tribes didn't even allow the cluster bonus in those 1 per 40 areas, which had the highest level of protection. The other regulations were more specific. Floodplain regulations, for example, didn't talk about density. Those were specific criteria for development. The DMR, in her interpretation, was more for looking at the resources they wanted to see protected and using a spatial analysis type of concept. It wasn't parcel by parcel but looking instead at the corridor that needed to be protected. It was kind of like a hierarchy of where the most sensitive areas were, if that made sense. The other regulations didn't give you that spatial view. She knew the growth-projection study and the public opinion study were old. If they had the money, they would poll the public again on why they wanted to be here. She thought they could make the regulations easier to understand. They were trying to protect the areas the public said they wanted protected. She gave examples of development design the Tribes had done.

Steve R pointed to the applicability section of the DMR where it talked about the Lake County jurisdiction. It didn't all fall under that jurisdiction. He was interested if staff could tell about different types of land and ownership, and to which of those the DMR applied. He gave examples of different kinds of ownerships. In the future, he was interested in what entity had jurisdiction over which. Mike Hutchins's comments talked about amendments and changes that were made at the 1-year point. LaDana said she couldn't find that changes were actually made. At one Planning Board meeting, the staff took the DMR to the Board for comment. She could see that comments were made. She had those but hadn't looked through the file entirely herself. There were never changes made based on that. It never went back to the Planning Board after that. There was never a recommendation to the Commissioners. At that point, it seemed like a lot of the same concerns that the Planning staff had today about implementing the regulations and how they worked were coming up. This was 9 years down the road and they still hadn't answered those questions. The regulations weren't working at that point. They knew there were issues. For whatever reason, the Board didn't make a recommendation or go further with them and it never went on to the Commissioners.

Steve R said in most of the zoning regulations, amendments were separated into text amendments and map amendments. He didn't see that here. He thought that might be appropriate here. In reviewing the growth policy, there was a possibility that the growth policy should change the map but not the regulations. If they separated the two, they could make some changes to make the regulations clearer and fairer without having to worry about wasting time

because they needed to update the growth policy. When the growth policy was updated, it might change the map and where some densities were and how those densities around growing communities were changing. They talked about the 1 unit per parcel rule that staff interpreted. He wasn't sure how they were applying it. Unlike the [specific] zoning district regulations, there was no DMR conformance permit required. When someone wanted to build on a lot that existed prior to the adoption of the regulations, they didn't have to do a permit. LaDana explained that people called to ask if they needed a permit or it came through as a check on the sanitation permit, since Planning commented on sanitation permits. Steve said if it didn't require sanitation, someone could do some development. If they were going to do an enforceable thing, they needed to add a permit regulation like the zoning conformance. LaDana said that was a good point. A few years ago, there was talk of implementing a building notification program. They did some research but it never got off the ground. They would be checking the things they were already checking when a sanitation permit or address came through, so they were doing some of those things now without seeing an actual permit. She said that Steve R was right in that there were a lot of structures that [Planning] didn't know about until after they were built. The other thing that happened was that if they issued a permit, the information was sent to Dept. of Revenue (DOR) so DOR would know there was a new structure on the property to look at for the tax rolls.

Roland mentioned that Flathead County tried to do that in the 1990's. He described the situation, summarizing it as total chaos. According to MT state law, a fee was a tax and you couldn't have a new tax without going through the proper process and it got shut down. Steve R thought there was a difference between a building permit and a conformance permit. LaDana explained building notification permits had been issued for subdivisions since roughly 1996 to check for compliance with the subdivision approvals. Roland said he thought they'd encounter huge opposition if they went down the road for a county-wide, all-inclusive permit.

Steve R envisioned something that just said they conformed with the density so if it said one unit per acre, they didn't have two per acre. LaDana said they needed to determine what a unit would be. They did this already with the septic permits. The piped water supply kicked it in, which was going through sanitation review. It had been a difficult thing. What exactly was a unit? This said for human habitation. If you were in your garage, were you inhabiting it? Robert said they struggled with this in helping people do what they wanted to do. People wanted to have a little cabin on the hill, or a guest cabin for their mother, or they wanted to run a mechanic shop on their property. Technically that was a commercial unit and a residential unit and that wasn't something that should be going on either, so the staff struggled with that exact thing. They needed to clarify that. How did they do that without dictating a land use? They ran into that wall also. LaDana asked if you could just have so many structures on your property and that was the density.

Gale thought that was a question after 10 years. He referred to minutes where Sue Shannon stressed the proposal didn't dictate land use. There was a part in the regulations that said it became null and void if it did. After 10 years, they could look back and ask that question. He had an opinion on that but it was just his opinion. If it had, it was null and void. If it hadn't, they could possibly move forward. Steve R wondered if there was some interpretation of that. Was dictating a land use the same as influencing a land use? If there were a big number of acres

per unit, you would influence land use by allowing people to farm and do things they couldn't do if there was a house on every acre. You influenced land use but you weren't requiring someone to farm a 40-acre piece just because they couldn't divide it smaller. They weren't dictating [land use] but they were influencing. Janet pointed out it said dictating on a county-wide basis, not on the particular parcel you were discussing when you were applying the DMR. She read the wording from the regulations. That was an important caveat. Nobody was dictating it on a county-wide basis.

Gale said the landowner would argue about that. The owner would say in a low density area that they couldn't do anything with their land as far as development so you were dictating what the owner could or could not do with it. Steve R said the owner was saying that one use of the land was subdivision. He thought that would be helpful too and it might be something that the attorney would have to help them on. He was interested in a list of land uses. When he looked at the zoning district regulations, those talked about categories such as residential, single-family, multi-family, commercial, industrial, agricultural and possibly conservation. Conservation might not be a use but it might be an example of 'none of the above'. There wasn't a land use called subdivision. When you talked about specifying a use, were you actually specifying a use when you told people the minimum lot size or the maximum density? Was that legally considered a land use?

Bob S thought if you cut it up to sell it, was the use selling it? That wasn't a use to his mind. Janet said people could buy land and do nothing with it, like with tax write-offs or wildlife habitat. That wasn't really a use. There was no dictation on what happened to the rest of the land either—it was just subdivided.

Bob K asked about the comments in the margins. Were those from Mark Russell? LaDana replied she and Mark worked together on it. Bob K read some of those. In Mark's opinion, they were telling people what that land use was. LaDana said you were calling it something. That was a use that was going on there. Janet said open space could mean many things. It wasn't necessarily a use. It might be a not-use. Bob K said that referred back to the phrase on dictating land use. If it was open space in St. Ignatius and open space in Elmo, was it the same thing? That was county-wide. Janet thought it said a future attempt to add provisions that dictated specific land uses for the whole county. That would be saying in the 1 per 40 acres, it could only be open space, 1 per 20 could only be farmland, 1 per 10 could only be residential and growth areas could be mixed uses. That was what land use was. She listed some land uses. These had definitions. There wasn't a definition of open space. That wasn't typically a land use. Bob K asked about how that would be in court. This was a good process they were doing but ultimately they could end up with a nice little package they thought was right. They would give it to the County attorney, who would say this or that was a land use or this or that wasn't right. Then they'd be back here again. Was this going to work that way? LaDana said hopefully the new attorney, who was a land use attorney, would be at the meeting and would speak to them. He just started yesterday and wasn't prepared to come tonight.

Robert observed they were focusing a lot on the second sentence where they were talking about land uses. The first sentence said it was only intended to influence the density of new parcels created under Lake County's jurisdiction and was not intended to prescribe land use. The

question he asked the Board to consider was if they had these definitions that were listed to talk about open spaces, view shed, wildlife habitat and developable land, what was the reason these were defined? If you dived into it, you found these were defined because they were referenced later in the regulations. If you were saying what developable land was, it sounded like a land use. Why was it in there if you weren't supposed to prescribe land uses? Developable land was discussed in conservation developments if you wanted this bonus. It seemed to him like they were dictating the use of the land.

Steve R referred to the question of dictating or influencing. When they mentioned a particular land use because they wanted to provide for that land use if the owner wanted to use it for that, they needed to define it. They couldn't mention land use in the regulations. If they looked at this, it didn't mention regulations until page 5. The regulations started in section 6, which was entitled 'Regulations'. LaDana said the definitions were part of the regulations. Steve R suggested the sections entitled 'Regulations' should avoid dictating land use. In the other sections outside of that, they could mention land uses in order to define them. In those definitions, they were not applying that land use to a location. They weren't regulating land use by defining it. LaDana said those were incorporated into the regulations later on. Steve R thought they needed to look at the way those were used. It was a different way to look at this. For instance, because the word 'agricultural' was used in the document, it didn't mean they needed to take the word out. The word could be used without regulating agricultural lands.

Karen thought they were working with a square peg and a round hole. It might be easier to say they had language that wasn't helpful and to amend it. It was subject to amendment. It was better to amend and make it reasonable and logical. The DMR in theory seemed not to be regulatory in nature. It would make things a lot cleaner if it was regulatory in nature. If they defined things like what a unit was, that would make it even better. If they could go through the problematic language, it would be even better. They kept trying to fit this in a little box. It might be better to say it was a good product, to make it regulatory, to amend it and figure out what was logical, from her perspective. LaDana said Karen was right. They had a concept here. Nothing said they couldn't work with the concept. They needed to find a way to make that work.

Steve S said they needed to agree on the purpose of the document. Was it a regulatory document or was it something else? Was it just a map? He didn't think they'd come to a conclusion yet. Steve R agreed. After they solved some of the general ideas, they needed to go through it from the beginning, step by step, to fix the problems that staff, Board and public had found or mentioned with it, and maybe step through the memo passed out tonight. LaDana said she tried to do that with the memo, and put in some of the points. She didn't put in all of the examples. The planners got questions almost on a daily basis about the DMR and what people could do. Some were common questions or ones that stood out. The planners couldn't tell them all of the questions but could say where some of the issues were and where things were working.

Roland mentioned some billboards along the highway that were composed of 16 sheets of 4 x 8 plywood in size with 3-foot diameter posts holding them up. He hoped things like that didn't get lost. Sometimes in actual day-to-day reality of what people were seeing and what was going on, those little things were more important. His favorite shot in the video was about the view with a billboard painted like the view it was blocking. Janet said she would love to address the sign

regulations someday. Roland said there were areas where you couldn't have signs. Janet thought highway dollars used to be affected by billboards. The sign regulations were supposed to be addressed after the video was done but Lake County had to update subdivision regulations, then lakeshore regulations and zoning regulations. Now they were back to DMR and she thought [the DMR] was the most critical thing they had to work on. It solved quite a few problems and helped bridge the gap between how the Tribes and non-Indians were developing. Their lead attorney said she would commit some Tribal attorney resources to this as well.

LaDana asked the Board to read through the information she had given them. It went into further depth than the previous comments on the regulations they received. The questions that she asked there were the ones the planners were dealing with on a daily basis and they were struggling to answer. She asked that the Board think about those questions so they could understand where the planners were coming from and why the regulations didn't work. Maybe the Board would have a solution that the planners hadn't seen. Janet thought the Board might think of more questions.

Janet asked about an interim meeting for this item before the October meeting. LaDana mentioned the Oct. 31 deadline from the Commissioners for a recommendation from the Planning Board. They would have one meeting prior to that deadline without special meetings. Steve R referred to this discussion last time. He thought the conclusion was they wanted to have 4 meetings between the last meeting and Oct 31, with two Sept meetings and two Oct meetings. Roland was very interested in the attorney input. As a governing entity, could they change what thousands of people could do with their property? LaDana said they already did that when the DRM was implemented in 2005. Roland clarified his comment, referring to only if a parcel was being created. LaDana explained that every time a subdivision came up, the planners wrote up a section on how it complied with the DMR. They were addressing the zoning.

Bob S said they still had work to do, maybe with extra meetings and the regular meeting. Discussion of timeline, meetings, availability and dates ensued, including staff parameters, notice parameters, the possibility of phone conference, the new attorney and possible input and request for extension, with the outcome that staff would talk with the new attorney and email the Board after that.

Bob K checked for a consensus on this approach: to have the staff and Wally, the new attorney, get together and maybe make this tighter for the Board. He knew the Board tended to go on tangents and it was difficult to get through documents.

[Jordon Thompson] had a question from the Tribal legal perspective. He wondered if the Tribal attorney could possibly sit in on this initially. Bob K thought that would be great. Roland thought the chance of an extension might be more palatable to the Commissioners with a schedule and what it would take, for quality completion. Gale agreed to take this to the Commissioners at Janet's request.

OTHER BUSINESS

Motion made by Steve Rosso, and seconded by Roland Godan, to adjourn. Motion carried, all in favor. Meeting adjourned at 9:42 pm.